

# EXHIBIT 21

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

5 DOROTHY FORTH, DONNA BAILEY, )  
6 LISA BULLARD, RICARDO GONZALES, )  
7 CYNTHIA RUSSO, TROY TERMINE, )  
INTERNATIONAL BROTHERHOOD OF )  
ELECTRICAL WORKERS LOCAL 38 )  
HEALTH AND WELFARE FUND, )  
INTERNATIONAL UNION OF OPERATING )  
ENGINEERS LOCAL 295-295C WELFARE )  
FUND, AND STEAMFITTERS FUND )  
LOCAL 439, on Behalf of )  
Themselves and All Others )  
similarly Situated, )  
Plaintiffs, )  
vs. ) Case No.  
WALGREEN CO., )  
Defendant. )

17           The videotaped deposition of EDWARD FOX,  
18 taken before Maria S. Winn, CSR, RPR and CRR,  
19 pursuant to the Federal Rules of Civil Procedure  
20 for the United States District Courts pertaining  
21 to the taking of depositions, at Reed Smith,  
22 10 South Wacker Drive, Suite 4000, Chicago,  
23 Illinois, commencing at 9:22 a.m. on May 7, 2019.

1           And if you look on page 4, do you see  
2 there's a reference to Sav-Rx?

3           A     Yes.

4           Q     And Sav-Rx was your PBM prior to  
5 Caremark; is that correct?

6           A     Yes.

7           Q     Can I call them Sav-Rx?

8           A     Yes.

9           Q     And is it fair to say they provided the  
10 same services to the Fund that Caremark did?

11          A     Correct.

12          Q     Or that Caremark does, correct?

13          A     Correct.

14          Q     And it looks like the -- that Sav-Rx was  
15 the Fund's PBM from 2007 to 2014; is that correct?

16          A     Correct.

17          Q     Now again, this does not list anyone by  
18 name at Sav-Rx.

19           Are you aware of anyone at Sav-Rx who  
20 interfaced with the fund on a regular basis?

21          A     Christy Piti.

22          Q     Can you spell her last name?

23          A     P-i-t-i.

24          Q     Anyone else?

1           that your participants can go to, correct?

2           A       Correct.

3           Q       And that allows CVS Caremark to manage  
4           its costs, correct?

5                   MR. GUGLIELMO: Objection, form.

6           A       Not necessarily. They would be managing  
7           our costs for us by getting the best discounts  
8           available based on the networks.

9                   BY MR. LEIB:

10          Q       But you chose to have the largest network  
11           option, which is an entire national network,  
12           correct?

13          A       Correct.

14          Q       And that, you're saying, is more  
15           expensive pricing than Option 2, 3 or 4, correct?

16          A       It would be, but I wouldn't -- not know  
17           what the differential would be, if it would be  
18           material or not.

19          Q       And would you agree that the exclusion,  
20           that parentheses that's there, excludes Walmart,  
21           Sam's Club, and Rite Aid participating pharmacies  
22           for this participating group only, is an  
23           adjustment to the national network that's  
24           available under the base contract?

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1 A It is.

2 Q And if --

3 A But I wouldn't -- I wouldn't -- I'm not  
4 aware if they adjusted the discounts to reflect  
5 that or not.

6 Q And to know that, we'd have to ask the  
7 Segal Group; is that correct?

8 A Yes.

9 Q Do you recall any discussion, when  
10 negotiating the contract, over whether to include  
11 or exclude Walmart, Sam's Club, and Rite Aid?

12 A The board instructed Segal to exclude  
13 those pharmacies from the network.

14 Q Do you remember any discussions that the  
15 board was having about whether to do that or not?

16 A Because those pharmacies were excluded  
17 previously, they wanted to continue that policy.

18 Q And they were excluded because of  
19 concerns about them not having labor -- them not  
20 having union employees, correct?

21 MR. GUGLIELMO: Objection, form.

22 A No. It's union-built facilities. It's  
23 not union employees.

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From the time period 2011 to the present.

2 A Correct.

3 MR. LEIB: I'm going to -- I'm going to  
4 mark an exhibit that we'll mark as Exhibit 74.

5 (Document marked as Defendant's  
6 Exhibit No. 74 for identification.)

7 BY MR. LEIB:

8 Q This is a document that was produced to  
9 us by your lawyers in this case, and it has a  
10 Bates stamp in the bottom right. You can see it  
11 says IBEW in the bottom right.

12 Do you see that?

13 A Um-hm.

14 Q Which means it came out of IBEW's files.  
15 Do you recognize this document?

16 A I mean, I knew the program existed.

17 | But . . .

18 Q So you don't recognize the document, but  
19 you know about the program --

20 A      Correct.

21 O -- that is referred to in the document?

So it talks about a Sav-Rx advantage card. And it says, in the second sentence:

"A program has been created to assist our

1 members who have run out of pharmacy benefits."

2 Under what circumstance could one of your  
3 participants run out of pharmacy benefits?

4 A Well, I mean, it says "run out of  
5 healthcare."

6 So that would mean that the participant  
7 had lost their eligibility in order to be able to  
8 participate in the program, or the Health and  
9 Welfare Fund.

10 So that would be caused by a reduction in  
11 hours, there not being enough work, and not  
12 meeting the hours eligibility rules.

13 Q Let -- that's not actually what this  
14 says.

15 What the second sentence says -- it  
16 doesn't talk about health benefits, it talks about  
17 pharmacy benefits. And in fact, it's a  
18 prescription advantage card, so specifically  
19 referring to pharmacy benefits.

20 And it says: "Run out of pharmacy  
21 benefits."

22 It doesn't say no longer eligible for  
23 pharmacy benefits, correct?

24 MR. GUGLIELMO: Objection, form.

1 (Reporter clarification.)

2 BY MR. LEIB:

3 Q So does that -- are you saying the second  
4 sentence is just incorrect in its description of  
5 the program?

6           A       But the second sentence is to go along  
7 with the first sentence, which means that the  
8 member has run out of healthcare, so they've run  
9 out of their eligibility.

10 So during the downturn of 2008, when work  
11 went bad and work was not good, members lost  
12 eligibility.

13 And so when they lose their eligibility,  
14 they ultimately lose the entire medical, drug,  
15 dental, vision, everything.

16 And so what they were putting this out  
17 there for was to make members aware that this  
18 Sav-Rx advantage card is out there. Since they  
19 don't have coverage through our -- the IBEW Health  
20 and Welfare Plan, that this program is out there  
21 for them free of charge, to provide them discounts  
22 on their prescription drugs.

23 Q So this says that if somebody uses this  
24 card, they would get up to a 32 percent discount

1       that it says -- it means the pharmacy's usual  
2       selling price for a prescription drug if the  
3       product was not eligible for coverage under the  
4       Plan.

5                  I don't know what that means.

6                  Q      Well, I'm not asking if you understand  
7       what the definition of usual and customary means  
8       right now.

9                  I'm asking if the Fund knows what the  
10      definition of usual and customary is in the  
11      current contract between Walgreens and Caremark.

12                 A      We wouldn't have that contract available  
13      to us.

14                 Q      So you would not know what the definition  
15      of usual and customary is in that contract,  
16      correct?

17                 A      No.

18                 Q      And does the Fund know what the  
19      definition of usual and customary is in any prior  
20      contracts between Walgreens and Caremark?

21                 A      No.

22                 Q      Does the Fund know if the definition of  
23      usual and customary has remained the same in all  
24      contracts that were in existence between Walgreens

1 and Caremark between 2014 and the present?

2 A No.

3 Q Does the Fund know what the definition of  
4 usual and customary was in the contract between  
5 Walgreens and Sav-Rx at any point between 2007 and  
6 2014?

7 And I know you're looking at your  
8 contract, but I'm now referring to the contract  
9 between Sav-Rx and Walgreens.

10 A Right. But I'm just -- we would not have  
11 knowledge of the particular contract between  
12 Sav-Rx and Walgreens.

13 Q So the Fund has no knowledge of what the  
14 definition of usual and customary is in any  
15 contract between Walgreens and Sav-Rx at any point  
16 between 2007 and 2014, correct?

17 A Correct.

18 Q Does the Fund have a contract with  
19 Walgreens?

20 A No.

21 Q So isn't it the case that if you paid  
22 more than the U&C price that is required by your  
23 contracts with Sav-Rx and Caremark, that your  
24 grievance is with Caremark and Sav-Rx and

1 not Walgreens?

2 MR. GUGLIELMO: Objection, calls for a  
3 legal conclusion.

4 To the extent you know.

5 A Repeat the question.

6 BY MR. LEIB:

7 Q Sure. Isn't it the case that if you paid  
8 more than the usual and customary price that is  
9 required by your contracts with Sav-Rx and  
10 Caremark, that your grievance is with Caremark and  
11 Sav-Rx and not with Walgreens?

12 MR. GUGLIELMO: Objection, calls for a  
13 legal conclusion.

14 A I mean, it would be -- I'm really not  
15 sure.

16 I mean -- I mean, I would think both  
17 would be as liable as the other because...

18 BY MR. LEIB:

19 Q Your contract is with the PBM, correct?

20 A Yes.

21 Q And you contract and expect to get the  
22 price required by the contract with the PBM,  
23 right?

24 A Yes.

1 Q You haven't sued Caremark -- CVS  
2 Caremark, have you?

3 A No.

4 Q You haven't sued Sav-Rx, have you?

5 A No.

6 Q But those are the two companies that,  
7 between 2007 and the present, the Fund had a  
8 contract with regarding pharmaceutical benefits,  
9 correct?

10 A Yes.

11 Q Would you agree that PBMs pay close  
12 attention to what is happening in the  
13 pharmaceutical marketplace?

14 MR. GUGLIELMO: Objection, calls for  
15 speculation. Also outside the scope of the  
16 notice.

17 BY MR. LEIB:

18 Q Do you know --

19 MR. GUGLIELMO: Same objection.

20 BY MR. LEIB:

21 Q Do you know if PBMs pay close attention  
22 to what is happening in the pharmaceutical  
23 marketplace?

24 MR. GUGLIELMO: Same objection. Outside

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1                   The undersigned is not interested in the  
2       within case, nor of kin or counsel to any of the  
3       parties.

4                           In witness whereof, I have hereunto set  
5                           my hand and seal of office this day, May 8, 2019.

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CSR No. 084-003784 - Expiration Date: May 31, 2019

Maria S. Win